

1 many guys on it, you know.

2 Q. Sure, okay.

3 So the skiff remains tied up alongside
4 the dredge and it's there for basically
5 errands?

6 A. Right. The captain did use it quite a bit.
7 He used it to go back and forth on his own,
8 which is fine. He's allowed to do that.
9 He's the captain.

10 Q. Sure.

11 So let me ask you this: Did you have
12 to get permission to go in the skiff to take
13 the safety man for lunch?

14 A. No, no.

15 Q. So you can kind of come and go as you please?

16 A. If I have errands to run, that's what we do,
17 yeah. Everyone makes up a list of what they
18 want for lunch and they give it to one guy
19 who isn't doing anything.

20 Q. Which is the safety guy?

21 A. Which is the safety guy. And he gets lunch
22 for everything -- everybody.

23 Q. And you give him money?

24 A. Right.

1 Q. So when you left with the safety man on the
2 skiff, had you already received the radio
3 message about the parts?

4 A. I hadn't, Kenny King had. As I said, that's
5 what he told me he had. He had received.

6 Q. And he just kind of missed you?

7 A. No, he told me he was going to be getting --
8 they weren't there yet. He was getting parts
9 in, so when he comes to the shore, go over
10 and get the parts. And I said, no problem.
11 And I kept doing what I was doing.

12 Q. So let me just back up a bit then.

13 You had been at this particular job
14 site for months before you got hurt?

15 A. Yeah, a couple of months anyway, yeah.

16 Q. How often did you use the skiff before you
17 got hurt?

18 A. Everyday. A couple of times a day.

19 Q. Before the time that you got hurt, did you
20 have any problem or complaint with the skiff?

21 A. Not me. It had sunk twice. But not by me.
22 It was left on the dock and they left it over
23 the weekend and it had rained and it filled
24 up and it sank.

1 Q. okay.

2 A. And they said there was a problem with it.

3 And so we yanked the engine off and they took
4 it to some marina and had it fixed.

5 Q. But as far as you operating the skiff before
6 you got hurt, did you have any problems or
7 complaints?

8 A. No.

9 Q. It worked fine as far as you were concerned?

10 A. Right, until it sank. Then they went and
11 had it fixed.

12 Q. And it sank because it got filled with water?

13 A. Right. And the village pump wasn't working.

14 Q. That didn't have anything to do with your
15 accident though?

16 A. No.

17 Q. And once they fixed it, where did they fix it
18 do you know?

19 A. I don't know the name of the place.

20 Q. It was in New Jersey though?

21 A. Right.

22 Q. And after they fixed it, it was working fine?

23 MR. ROSENTHAL: Objection as to
24 form.

- 1 A. I hadn't been on it.
- 2 Q. When in relation to when you got hurt, when
3 did it go in for repairs?
- 4 A. It had come back like two days and then we
5 finally got it back in the water, and you
6 can't just pick it up and just steal a skiff.
7 And we had a front end loader and put it in
8 the water for us on that day and then I took
9 it.
- 10 Q. So in relation to when you got hurt, when did
11 the vessel sink?
- 12 A. A couple of weeks before I guess.
- 13 Q. And it took that long to get it back into
14 commission?
- 15 A. It took a while I guess, yeah. I don't know
16 what they did.
- 17 Q. In the meantime, were you using a different
18 skiff?
- 19 A. No, we were using the tugboat which we
20 didn't like to do. You would have to use the
21 tugboat to go out the buoys, with the anchors
22 on them. But you have to make sure you have
23 lights on them so no boats run into them or
24 cross your anchors.

1 Q. And you can't operate the tugboat unless
2 there's a captain on board?

3 A. Right.

4 Q. A captain who is recognized by the United
5 States Coast Guard as a cap --

6 A. Right. He has to be a captain, right.

7 Q. And when we say that, we mean a captain's
8 license from the United States Coast Guard?

9 A. Right.

10 Q. Not like just like a guy on a fishing boat
11 can call himself a captain with no papers.

12 A. Right.

13 Q. You would need to have papers?

14 A. Right.

15 Q. Who would operate the tugboat while the skiff
16 was out of commission?

17 A. I don't know his name. He's the captain of
18 the boat.

19 Q. Oh.

20 A. There's a captain on the tug and a deck hand
21 on that. I know the deck hand's name, but I
22 don't know the captain's name.

23 Q. What was the deck hand's name?

24 A. David Bell.

1 Q. what did you say, the skiff sank twice or
2 once?

3 A. Twice.

4 Q. Same reason both times?

5 A. Yeah, the second time I don't know why.

6 They didn't tell me. I don't know.

7 Q. When was the first time that it sank?

8 A. I don't even know. A couple of weeks into
9 the job.

10 Q. And then you got it -- and then did it need
11 repairs after that?

12 A. No, it didn't. The engine did not submerge
13 at that time.

14 Q. So the first time the skiff sank, as a result
15 of that, the skiff wasn't taken out of
16 service?

17 A. Right. We just pumped it out. We just
18 pumped it out and continued using it.

19 Q. It had no problems?

20 A. No, there was an outboard engine and it
21 didn't get submerged.

22 Q. And then the second time it sank was several
23 weeks before your incident?

24 A. Yeah, maybe two weeks.

- 1 Q. And on that occasion the engine got
2 submerged?
3 A. The -- yeah, the stern line had propped so
4 it went down to the bottom.
5 Q. When you say the stern line had popped, what
6 do you mean by that?
7 A. It broke.
8 Q. The line parted?
9 A. Right.
10 Q. The engine got submerged?
11 A. Right. The stern sunk to the bottom.
12 Q. Was that the result of some sort of storm or
13 something like that?
14 A. Yeah, there was a bad storm. It was
15 actually snow and ice.
16 Q. Who is responsible for securing the --
17 A. Kenny King.
18 Q. -- the skiff?
19 A. Kenny King.
20 Q. You're saying responsible because he's the
21 captain with overall responsibility?
22 A. No, because if it were me, we would have put
23 it up on the deck of the barge over the
24 weekend. Just pick it up with the crane,

1 easy enough to do. But he wanted to use it
2 to go back and forth. He would come in
3 before us and do his own little thing and he
4 would leave after us and do his thing. I
5 don't know what he did because I wasn't
6 there.

7 Q. Have you spoke then to him about your
8 incident at all?

9 A. I haven't.

10 Q. Has someone on your behalf talked to him or
11 spoken to him?

12 A. I'm not sure.

13 Q. So then on the second sinking of the skiff, I
14 mean what happened, you showed up the next
15 morning and saw that the thing was on the
16 bottom?

17 A. We showed up Monday, we showed up Monday
18 morning back from home and it was on the
19 bottom. So we just went to work on the
20 tugboat, and the captain -- and I don't know
21 who else, they took it out and said they were
22 taking it to the shop.

23 Q. For repairs?

24 A. Right.

1 Q. During the time that you're working, you're
2 staying in New Jersey through the week?

3 A. Right.

4 Q. But returning home to the Cape on the
5 weekends?

6 A. Right.

7 Q. And it's a five day a week --

8 A. Right.

9 Q. -- job?

10 A. Yes.

11 Q. So you show up Monday and the skiff's on the
12 bottom. You take the tug out to the barge
13 and begin work same as you always do?

14 A. Right.

15 Q. And who took the -- who handled the skiff?

16 A. Kenny King, the captain.

17 Q. Were you able to raise the vessel?

18 A. They did it, I don't know. They must have
19 used the front end loader they had on shore.
20 I wasn't there. I don't know.

21 Q. Did they immediately take the skiff in for
22 repairs, do you know?

23 A. I don't know.

24 Q. Do you know where they took the skiff?

1 A. They put it up in the parking lot. I don't
2 know where they took it to to have it
3 repaired.

4 Q. But you know they took it somewhere?

5 A. Right.

6 Q. Someplace that specializes in that sort of
7 thing?

8 A. I would imagine so, yeah.

9 Q. Now, did you guys attempt to work on it
10 yourselves?

11 A. No.

12 Q. I imagine some of you guys are pretty handy
13 in regard to that?

14 A. Right. No one asked us to. They just took
15 it for someone to take care of it.

16 Q. And they took it to some engine place?

17 A. They must have, yeah. I know they did. I
18 just don't know which one it was.

19 Q. How do you know that they did?

20 A. Because they told us they did and they were
21 going to pick it up some day, I can't
22 remember, and that was that.

23 Q. So while the skiff's out of service, you're
24 using the tugboat to run around, get lunches,

1 that sort of thing?

2 A. Right.

3 Q. And that's not the way you guys wanted to do
4 it, right?

5 A. No.

6 Q. Why is that again?

7 A. You want to leave the tug beside the dredge
8 at all times if you can. I mean, there are
9 certain times you have to move the dredge --
10 I mean, move the tugboat.

11 Q. The tugboat?

12 A. Right. To move the barges and stuff, yes.

13 Q. Why is that, that you want to leave the --

14 A. If you pop a cable or something, you want
15 that boat to be there to stop you from
16 crashing into the rocks because that happens.

17 Q. Does the tug move the barges on the job site
18 at all, or is that done by the --

19 A. The tug moves the barges, but not the
20 dredge. The dredge is -- we move on our own.
21 Like I told you about the wires.

22 Q. So you got the skiff back the morning that
23 you got hurt?

24 A. No, I think it was there for a couple of

1 days.

2 Q. oh, okay. But you didn't have opportunity to
3 use it?

4 A. Right, no, no. They had used it. Kenny
5 King had used it, but I had no reason to use
6 it for that day anyway. You know, the day
7 before, on that Friday I know they had it
8 because I saw it. And him and the welder
9 went out and checked the lights for the
10 weekend.

11 Q. Is that typical, though, when the skiff's in
12 service don't you use it on at least a daily
13 basis?

14 A. Yeah, if I need it, yeah. Unless the
15 captain's on it and he's running errands
16 anyway, he'll run over whoever wants to come
17 aboard or whatever parts we need. Like I
18 said, that day, I know that Friday before him
19 and Frankie Pilate went out to check the
20 lights. Because you always check the lights
21 daily so no fishing boats run over the wire.

22 Q. And what lights are these that you're
23 referring to?

24 A. The lights on the buoys over the anchors.

1 Q. To alert?

2 A. To alert any boats coming through not to run
3 over my cables.

4 Q. When the skiff returned to service, was there
5 any conversation amongst the workers
6 regarding that?

7 A. No, just, you know, it was back that was it.

8 Q. Even casually, oh, good, the skiff's back.
9 we don't have to take the tug anymore, that
10 sort of thing?

11 A. No, just the skiff was back, that was it. I
12 mean, it was nice having it back, yes.

13 Q. And the day you got hurt was the first day
14 that you had been in the skiff since it had
15 gone off for repairs?

16 A. Yeah, that was the first day I had been back
17 on it.

18 Q. But Kenny King had been on it before you?

19 A. Right.

20 Q. Had anybody else been on it before you?

21 A. I believe the other deck hand had been.
22 That's what I was told any way. I don't know
23 for a fact but that's what I was told.

24 Q. Was that Frank --

1 A. Well, I know Frank because I saw him on it.
2 But they said the other kid Davie Bell, he
3 was on it.
4 Q. And he's a deck hand on the tug?
5 A. Right.
6 Q. So the guys on the tug, if they want to do an
7 errand, they take the skiff as well?
8 A. It's just easier that way, sure.
9 Q. So you grab the safety man and yourself and
10 you got into the skiff?
11 A. Right. He grabbed me and said, hey, you
12 want to bring me ashore, I want to go get
13 lunch.
14 Q. And you had already given him your lunch
15 order?
16 A. I hadn't. And I said, here, on the way over
17 -- I gave him money and I said get my a roast
18 beef and whatever it was. And that was it.
19 Q. And you're operating the skiff?
20 A. Right.
21 Q. And he's --
22 A. He's on the bow.
23 Q. He's on the bow.
24 A. Right. Waiting for me to go. There's a

1 ladder system on the wall.

2 Q. of the barge?

3 A. No, on the -- it's a sea wall actually.

4 Q. Where you're working you said?

5 A. Right. When you go to get to shore.

6 Q. Right.

7 A. There's a sea wall with a ladder and that's
8 how he got up. I brought him to that and he
9 went up and went to lunch.

10 Q. And the skiff, you just stepped from the
11 barge into the skiff?

12 A. Right.

13 Q. From the barge where you were working?

14 A. Right. There's two stairs. You climb down
15 two metal running stairs.

16 Q. That's what I thought you were saying.

17 And as far as operating the skiff to
18 take him ashore for the lunch run, he doesn't
19 have any responsibility, does he?

20 A. No.

21 Q. I mean, the skiff's small enough, you operate
22 it by yourself?

23 A. Right.

24 Q. And this is a typical -- what's the size of

1 the skiff?

2 A. I can't remember. Maybe 18, 22 foot.

3 Q. And what's the construction of the hull?

4 A. Steel.

5 Q. It has an outboard engine?

6 A. Right.

7 Q. Outboard motor?

8 A. Right.

9 Q. And you took him to the sea wall that you
10 mentioned without any kind of problem?

11 A. Right.

12 Q. And at that point at least you didn't have
13 any complaints?

14 A. I had no problem, right.

15 Q. No problems?

16 A. Right.

17 Q. Then what happened?

18 A. And then I was headed back to the dredge and
19 that's when the superintendent, I heard him
20 yelling and told me to come over.

21 Q. And what did he yell, just hey?

22 A. Hey, come over. He had the parts that we
23 needed. So I went back to the sea wall and I
24 loaded up the bolts and stuff we needed and

1 the equipment.

2 Q. Just so I get an idea. How far is that then
3 from -- you head back?

4 A. 45, maybe 50 feet. It wasn't -- maybe --
5 maybe a hundred feet, you know. It wasn't
6 that far. You can throw a rock and hit it.
7 For reference.

8 Q. So you turn around --

9 A. And I go back.

10 Q. -- and head back to see the supervisor?

11 A. Right.

12 Q. And the supervisor's name is what?

13 A. I think it's Nick Wagner. I believe that's
14 it. I could be wrong.

15 Q. That's a guy you knew before that day?

16 A. Yeah, yeah.

17 Q. And you turned the boat back to the sea wall?

18 A. Right.

19 Q. To get the parts?

20 A. Right.

21 Q. Where was he located when you arrived at the
22 sea wall?

23 A. He was on top. He was on top of the sea
24 wall waiting for me.

1 Q. How high is the sea wall?

2 A. I'd say ten feet and because it was low
3 water at the time.

4 Q. And you said there's a ladder?

5 A. Right.

6 Q. That's how you get --

7 A. That's how you get up and down, right.

8 Q. And then what happened?

9 A. I -- he handed down the bolts to me, I
10 loaded them on the bow.

11 Q. How did he hand them down to you?

12 A. I just reached up.

13 Q. You're still on the skiff now?

14 A. I'm still on the skiff now.

15 Q. And he's ten feet above you?

16 A. More or less ten feet. You climb up. I
17 nose in to the sea wall and I keep it in gear
18 so the boat stays steady right there and then
19 I climb up a couple rungs and I grab them and
20 put them down. I grab another one and I put
21 them down.

22 Q. Just so I understand this now --

23 A. Right.

24 Q. -- the skiff is right next to the ladder?

1 A. The ladder is -- you're on the -- I was on
2 the right side of the ladder.

3 Q. As you're facing it?

4 A. Right.

5 Q. And --

6 A. I had the throttle going on the engine to
7 hold the boat in place.

8 Q. And is the skiff actually touching the sea
9 wall?

10 A. Yes.

11 Q. Or the ladder? The sea wall?

12 A. The sea wall.

13 Q. And you've got the throttle --

14 A. On.

15 Q. -- on. To keep the boat forward?

16 A. Forward, right.

17 Q. And then you climb up?

18 A. I didn't actually climb up. I had one foot
19 on the skiff and another foot on the rung.
20 And he just handed them down to me and I just
21 loaded them on the bow.

22 Q. So you had one foot on the -- I'm just trying
23 to vision this. Was it your left foot?

24 A. My right foot.

1 Q. On the skiff?

2 A. Right.

3 Q. Your left foot on the first rung of the
4 ladder.

5 A. Right.

6 Q. And you're reaching up?

7 A. And I'm reaching up and grabbing them and
8 putting them down on the bow.

9 Q. And are they packages or boxes?

10 A. Boxes.

11 Q. How heavy is each box?

12 A. 75 pounds maybe.

13 Q. Fairly heavy then?

14 A. Yeah, 75 pounds maybe. Maybe 50.

15 Q. But you didn't have any problem with the
16 weight of the boxes?

17 A. No.

18 Q. This is something you've done before?

19 A. Right, right, all the time.

20 Q. How many boxes were there, do you know?

21 A. Maybe five. I don't know, I can't remember
22 how many.

23 Q. Were you able to get all the five boxes onto
24 the skiff?